STATE OF MICHIGAN

COURT OF APPEALS

ANGELA L. GRAVES,

Plaintiff-Appellant,

v

PLV PHOTO LABS, INC.,

Defendant-Appellee.

UNPUBLISHED
December 4, 2003

No. 241197
Oakland Circuit Court
LC No. 01-031164-CL

Before: Murray, P.J. and Gage and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff worked as a sales associate in one of defendant's retail outlets. On January 11, 2001 plaintiff and Glenn Schultz, the store manager, had difficulties with the film processing machine. Edward Hamilton, defendant's Vice President of Operations, told Schultz to send plaintiff to another store to process the film. Plaintiff made a crude comment of a sexual nature regarding her opinion of Hamilton's treatment of her. Schultz responded with his own crude comment. Plaintiff and Schultz conversed in this manner for several minutes. That evening plaintiff contacted Hamilton and complained that Schultz had made inappropriate comments to her. Plaintiff told Hamilton that she would be looking for another job. On January 17, 2001 Hamilton told plaintiff that both she and Schultz were in the wrong, that Schultz had given two weeks' notice, and that he would pay her for the next two weeks and would consider that her notice. Plaintiff did not return to work for defendant.

Plaintiff filed suit alleging that defendant violated the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq*., by discharging her from her employment after she complained of sexual harassment by her supervisor. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). The trial court granted the motion pursuant to MCR 2.116(C)(10), finding that while the evidence raised an issue of fact as to whether plaintiff was terminated from her employment, no evidence showed that plaintiff engaged in a protected activity by objecting to sexual harassment, that Hamilton was aware that she was engaged in a protected activity, or that plaintiff's participation in a protected activity was a significant factor in defendant's decision to take adverse action against her.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Under the ELCRA, an employer may not discriminate on the basis of sex, including through sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature if: (1) submission to the conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment; (2) submission to or rejection of the conduct or communication is used as a factor in determining the individual's employment; or (3) the conduct or communication has the purpose or effect of substantially interfering with an individual's employment by creating a hostile environment. MCL 37.2103(i); *Chambers v Trettco, Inc*, 463 Mich 297, 309-310; 614 NW2d 910 (2000).

To establish a claim of sexual harassment based on a hostile work environment, an employee must show that: the employee belonged to a protected group, the employee was subjected to conduct or communication on the basis of sex, the employee was subjected to unwelcome sexual conduct or communication, the unwelcome conduct or communication was intended to or did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment, and the existence of respondeat superior. *Id*. at 311.

The determination whether a hostile work environment was created is based upon whether a reasonable person, under the totality of the circumstances, would have perceived the conduct at issue as substantially interfering with his or her employment or as having the purpose or effect of creating a hostile, intimidating, or offensive employment environment. *Burns v Detroit (On Remand)*, 253 Mich App 608, 627; 660 NW2d 85 (2002), modified in part 468 Mich 881 (2003). A single incident of sexual harassment is generally insufficient to constitute a hostile work environment, but a single incident may be sufficient if it is severe and perpetrated by an employer in a closely-knit working environment. *Radtke v Everett*, 442 Mich 368, 372; 501 NW2d 155 (1993).

A plaintiff who claims retaliation for opposing a violation of the ELCRA must show that: (1) he or she engaged in a protected activity; (2) this was known by the defendant; (3) the defendant took an employment action adverse to the plaintiff; and (4) there was a causal connection between the protected activity and the adverse employment action. *Meyer v Center Line*, 242 Mich App 560, 568-569; 619 NW2d 182 (2000). To establish a causal connection, the protected activity must be a significant factor in causing the employer to take the adverse action. *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree. Plaintiff claimed that defendant engaged in unlawful retaliation by terminating her employment after she engaged in the protected activity of objecting to sexual harassment. The trial court correctly found that the evidence did not create a question of fact as to whether plaintiff engaged in a protected activity. Plaintiff asserted that the single incident in which Schultz made offensive comments had the effect of creating a hostile work environment. Whether a hostile work environment is created by unwelcome sexual communication is judged under the reasonable person standard and in light of the totality of the circumstances. *Burns, supra*. The totality of the circumstances includes the fact that plaintiff initiated and participated

in the conversation by making several crude sexual comments. *Grow v W A Thomas Co*, 236 Mich App 696, 706; 601 NW2d 426 (1999). Here, the trial court properly concluded that because under the totality of the circumstances a reasonable person could not conclude that the single incident alleged by plaintiff was sufficiently severe to create a hostile work environment, the evidence did not create a question of fact as to whether she engaged in a protected activity by objecting to unlawful sexual harassment. *Meyer, supra*, 568.

Furthermore, the trial court properly found that the evidence did not create a question of fact as to whether defendant knew that plaintiff was claiming that the comments Schultz made to her constituted sexual harassment. The evidence showed that at most Hamilton was aware that plaintiff was offended by sexual comments made by Schultz. Plaintiff did not reveal the nature of the remarks during her telephone conversation with Hamilton. Her written statement specified the nature of the remarks, but conveyed nothing other than the fact that she found the remarks offensive and that she was uncomfortable around Schultz. Plaintiff's statement did not clearly convey that she was raising the specter of a claim of unlawful sexual harassment under the ELCRA. *Barrett, supra*, 318-319. The trial court correctly found that plaintiff did not establish that defendant knew she was engaging in a protected activity when she complained about Schultz's comments. *Meyer, supra*.

Finally, the trial court properly found that the evidence did not create a question of fact as to whether a causal connection existed between plaintiff's act of complaining about Schultz and defendant's act of terminating her employment. Hamilton concluded that both plaintiff and Schultz acted inappropriately. Plaintiff told Hamilton that she intended to look for another job. Thereafter, he offered plaintiff two weeks' pay in lieu of notice. The trial court correctly found that plaintiff did not establish the existence of a causal connection between her making of a complaint against Schultz and the end of her employment with defendant. *Barrett, supra*, 325; *Meyer, supra*, 569.

Affirmed.

/s/ Christopher M. Murray
/s/ Hilda R. Gage
/s/ Kirsten Frank Kelly